

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

Case No. 1:18-cv-08175-ER

V.

BARRY C. HONIG,
et al.,

Defendants.

**DECLARATION OF RANDALL R. LEE
IN SUPPORT OF DEFENDANT
ROBERT LADD'S MOTION TO
DISMISS**

I, Randall R. Lee, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California, and I am admitted *pro hac vice* to this Court for the above-captioned matter. I am a partner with the law firm Cooley LLP, counsel for Defendant Robert Ladd in the above-captioned matter.

2. I respectfully submit this declaration in support of Defendant Robert Ladd's Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6) and Motion to Strike Pursuant to Federal Rule of Civil Procedure 12(f) and the Memorandum of Points and Authorities in Support. I have personal knowledge of the facts below and, if called as a witness, I could and would testify competently thereto.

3. Attached hereto as Exhibit A is a true and correct copy of MGT Capital Investments, Inc.'s ("MGT") Form 10-K Annual Report for the fiscal year ended December 31, 2015, dated April 14, 2016. This document is available to the public via the Securities and Exchange Commission's ("SEC") website.

4. Attached hereto as Exhibit B is a true and correct copy of a Schedule 14A filed with the SEC by MGT on October 13, 2017. This document is available to the public via the SEC's website.

5. Attached hereto as Exhibit C is a true and correct copy of excerpts from a Form 8-K filed with the SEC by MGT on April 5, 2011. This document is available to the public via the SEC's website.

6. Attached hereto as Exhibit D is a true and correct copy of a Form 8-K filed with the SEC by MGT on November 9, 2012. This document is available to the public via the SEC's website.

7. Attached hereto as Exhibit E is a true and correct copy of a Form 8-K filed with the SEC by MGT on May 18, 2015. This document is available to the public via the SEC's website.

8. Attached hereto as Exhibit F is a true and correct copy of excerpts from MGT's Form 10-K Annual Report for the fiscal year ended December 31, 2018, dated April 16, 2019. This document is available to the public via the SEC's website.

9. Attached hereto as Exhibit G is a true and correct copy of a Form 8-K filed with the SEC by MGT on October 9, 2015. This document is available to the public via the SEC's website.

10. Attached hereto as Exhibit H is a true and correct copy of a Form S-1 filed with the SEC by MGT on November 6, 2015. This document is available to the public via the SEC's website.

11. Attached hereto as Exhibit I is a true and correct copy of an article entitled *New Alert: MGT Capital Investments, Inc.* The article was published on the Small Cap Leader

website and is available to the public via the Small Cap Leader website. I believe this article was cited by the SEC at paragraph 139 of its Amended Complaint (Dkt. 105).

12. Attached hereto as Exhibit J is a true and correct copy of a Form 8-K filed with the SEC by MGT on May 9, 2016. This document is available to the public via the SEC's website.

13. Attached hereto as Exhibit K is a true and correct copy of an article entitled *Stock BEAST Report – MGT Capital Investments, Inc.* The article was published on the Stock Beast website and is available to the public via the Stock Beast website. This article was cited by the SEC at paragraph 146 of its Amended Complaint (Dkt. 105).

14. Attached hereto as Exhibit L is a true and correct copy of excerpts from a Form 8-K filed with the SEC by Intel Corporation on August 19, 2010. This document is available to the public via the SEC's website.

15. Attached hereto as Exhibit M is a true and correct copy of a Form 8-K filed with the SEC by Intel Corporation on April 4, 2017. This document is available to the public via the SEC's website.

16. Attached hereto as Exhibit N is a true and correct copy of a Form 8-K filed with the SEC by McAfee Associates, Inc. on January 11, 1994.

17. Attached hereto as Exhibit O is a true and correct copy of excerpts from an Amendment No. 1 to Form S-4 filed with the SEC by McAfee Associates, Inc. on July 18, 1995.

18. Attached hereto as Exhibit P is a true and correct copy of a table prepared by Yahoo! Finance showing daily opening, closing, high, and low prices and daily volume for the stock of MGT Capital Investments, Inc. from May 2, 2016 to September 7, 2018. This information is available to the public via Yahoo! Finance's website.

19. Attached hereto as Exhibit Q is a true and correct copy of excerpts from a Form 8-K filed with the SEC by MGT Capital Investments, Inc. on December 14, 2010. This document is available to the public via the SEC's website.

20. Attached hereto as Exhibit R is a true and correct copy of a Form 4 filed with the SEC by Robert Ladd on January 5, 2012. This document is available to the public via the SEC's website.

21. Attached hereto as Exhibit S is a true and correct copy of a Form 4 filed with the SEC by Robert Ladd on December 1, 2015. This document is available to the public via the SEC's website.

22. Attached hereto as Exhibit T is a true and correct copy of a Form 4 filed with the SEC by Robert Ladd on May 31, 2016. This document is available to the public via the SEC's website.

23. Attached hereto as Exhibit U is a true and correct copy of a Form 10-K/A Annual Report for the fiscal year ended December 31, 2018 filed with the SEC by MGT on April 22, 2019. This document is available to the public via the SEC's website.

24. Attached hereto as Exhibit V is a true and correct copy of a Factiva printout of a Wall Street Journal article dated June 16, 1995 with the headline "McAfee Associates."

25. Attached hereto as Exhibit W is a true and correct copy of a news article entitled *Four hours with John McAfee*. The article was published by the Financial Times and is available to the public on the Financial Times's website.

26. Attached hereto as Exhibit X is a true and correct copy of John McAfee's Wikipedia page as of April 13, 2016. This page is available to the public via the Wayback Machine.

27. Attached hereto as Exhibit Y is a true and correct copy of a news article entitled *John McAfee and Intel settle their lawsuits*. The article was published by Reuters and is available to the public on Business Insider's website.

28. Attached hereto as Exhibit Z is a true and correct copy of a news article entitled *John McAfee and Intel Settle Trademark Dispute*. The article was published by JD Journal and is available to the public on JD Journal's website.

I declare under penalty of perjury that the foregoing is true and correct.

Dated the 19th day of June 2019.

/s/ Randall R. Lee
Randall R. Lee